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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,062	10/12/2001	Paula Mary Sosalla	KCC 4777	1782

321 7590 03/30/2007  
SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER
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KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/30/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/30/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

## Office Action Summary

Application No.

09/977,062

Applicant(s)

SOSALLA ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-17, 19, 20, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-17, 19, 20, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 13, 15 – 17, 19 – 20 and 23 – 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Olson et al. (US 6,297,424)

The applied reference has a common applicant with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

With respect to claim 1, Olson et al. (hereinafter “Olson”) discloses a disposable absorbent article having an area which is visible when the article is worn, a color gradation in the area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color when the area is dry (one of fish 78), and a visible element (70) separate from the color gradation and disposed in the area at a location where the coloration is of lower intensity or absent such that the

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element remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claims 2 – 4, Olson discloses the visible element as a graphic, registration mark, and/or wetness indicator as set forth in col. 3, lines 29 – 32 and col. 4, lines 40 – 58.

With reference to claim 5, Olson discloses an article further comprising an outer cover (110) having an interior surface and an exterior surface, and an absorbent material disposed on the interior surface of the cover (44) said color gradation and said wetness indicator being disposed on said cover as set forth in col. 9, lines 49 – 52 and in the figures.

As to claim 6, Olson discloses the wetness indicator comprising and active graphic (one of fish 78) as set forth in figure 1.

With reference to claim 7, Olson discloses an absorbent article as a pant having a front region, back region, crotch region and wetness indicator on a portion of the crotch region which is substantially free of color as set forth in figure 4.

As to claims 8 and 9, Olson discloses a coloration change from higher intensity to lower intensity generally in the direction of at least one of the side edges of the pant as set forth in col. 2, lines 4 – 15; col. 2, line 50 to col. 3, line 6; col. 13, lines 27 – 45 and figure 1.

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Regarding claims 10 – 11, Olson discloses a color gradation involving only one color or a combination of different colors as set forth in col. 2, line 50 to col. 3, line 6 and col. 7, lines 39 – 43.

With respect to claim 12, Olson discloses an article further comprising a graphic and a registration mark on the article as set forth in col. 4, lines 46 – 49 and in figure 1. Olson discloses the use of licensed characters as suitable graphics, which are considered registration marks, along with other types of graphics.

The examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claim 13, Olson discloses an absorbent article as a pant having a crotch region wherein the registration mark is located on the crotch region (78) as set forth in figure 1.

Regarding claim 15, Olson discloses a disposable absorbent pant having a front waist region, a back waist region, and a crotch region extending between and interconnecting the front and back waist regions, the pant comprising an outer cover with an interior surface and an opposite exterior surface, an absorbent material disposed on the interior surface of the outer cover (figure 7A), a color gradation on an

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area of the pant which is visible when the pant is worn, said color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region when the pant is dry (one of fish 78), and a wetness indicator separate from said color gradation and disposed in the crotch region at a location where the coloration of the color gradation is of lower intensity or absent such that any indication of wetness by the wetness indicator remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claim 16, Olson discloses an absorbent pant wherein the wetness indicator comprises an active graphic (one of fish 78) as set forth in figure 1.

With reference to claims 17 and 19, Olson discloses a printed color gradation in the area as set forth in figure 1.

With respect to claim 20, see col. 2, lines 36 – 49.

Regarding claim 23, Olson discloses a disposable absorbent article having an area which is visible when the article is worn, a permanent graphic (70) comprising a color gradation in the area providing a coloration which varies in intensity over the area from a color of higher intensity of color to a lower intensity of color, and a visible element (78) separate from the permanent graphic and disposed in the area at a location where the coloration of the color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation as set forth in the figures.

As to claim 24, Olson discloses a disposable absorbent article comprising a color gradation that is visible when the article is worn, said color gradation comprising a coloration that varies in intensity from an area of higher intensity of color to a separate area of lower intensity of color, and a visible element (70) separate from the color gradation and disposed at a location where the coloration of the color gradation is of lower intensity or absent such that the visible element remains visible and is not obscured by the color gradation as set forth in the figures.

### ***Response to Arguments***

Applicant's arguments filed January 12, 2007 have been fully considered but they are not persuasive.

Regarding the applicant's argument that Olson fails to disclose or suggest an absorbent article having a color gradation that provides coloration when the area is dry, the examiner disagrees. Olson discloses in col. 2, lines 3 – 15 that the active graphic or fading graphic refers to a graphic that becomes invisible or significantly less visible with the passage of time when exposed to the environment but not to urine. Therefore, the color gradation change in intensity happens when the article is dry.

With reference to the applicant's argument that the permanent graphic cannot function as a wetness indicator, the examiner also disagrees. The applicant refers to col. 3, lines 24 – 29 for the definition of a permanent character graphic, which the examiner also refers to. The section states that there is no substantial change in visibility. This does not suggest that there is no change, but that the change is minimal.

Nonetheless, there is a change in response to urine as supported by lines 29 – 54 of col. 3. Lines 51 – 54 also state that the graphic may be configured so that the entire graphic does not substantially change, which suggests that some portions may be allowed to change while other portions have substantially no change.

The applicant also argues the use of permanent ink associated with the fading graphic. The examiner refers to col. 2, lines 36 – 49, which discloses that the fading graphic may be formed from an ink that changes color when exposed to urine. The ink is permanent in that it does not dissolve. It simply changes color to blend in with the background, but it is still there.

As to claim 15, the examiner contends that the applicant's arguments are not commensurate with the scope of the claim. The applicant argues the direction of the variation of the color intensity, but this is not required in order to meet the claimed limitation. The claim requires a color gradation, which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region when the pant is dry. A graphic is not even required to meet this limitation. One could consider the area having a permanent graphic versus an area that has no graphic. Alternatively, the fading graphic is still applicable in that it may be considered with the top of the graphic being in the vicinity of the waist region and the bottom being toward the crotch region. The variation in intensity could be considered over an amount of time since Olson discloses that the graphic fades when exposed to the environment.

A similar argument holds true with respect to claims 23 and 24. A permanent graphic comprising a color gradation in an area (as recited in claim 23) or a coloration



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(as recited in claim 24) may include the graphic and a surrounding area. In which case, the intensity varies over the area to include a higher intensity (permanent graphic) to a lower intensity (area with no graphic).

Alternatively, as earlier discussed, the disclosure of a permanent graphic is also applicable due to the fact that some change is allowed, just not substantial change.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Michele Kidwell  
Primary Examiner  
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